



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

ENERGY

IN THE MATTER OF THE FOCUSED AUDIT OF )  
ELIZABETHTOWN GAS COMPANY, NUI UTILITIES, )  
INC. AND NUI CORPORATION )  
)  
IN THE MATTER OF THE PETITION OF NUI )  
UTILITIES, INC. (d/b/a/ ELIZABETHTOWN GAS )  
COMPANY) AND AGL RESOURCES INC. FOR )  
APPROVAL UNDER N.J.S.A. 48:2-51.1 and N.J.S.A. )  
48:3-10 OF A CHANGE IN OWNERSHIP AND )  
CONTROL )

ORDER

DOCKET Nos.  
GA03030213 and GM04070721

(Service List Attached)

BY THE BOARD:

This matter is before the Board of Public Utilities ("Board") to consider a refund proposal filed with the Board on November 30, 2004 by AGL Resources ("AGLR"). AGLR proposes to credit \$21 million, plus accrued interest, to Elizabethtown Gas Company's ("ETG") customers beginning with the first billing cycle in January 2005.

Background

During the period from September 2002, to November 2003, NUI Corporation ("NUI") and NUI Utilities Inc. ("NUI-U") experienced multiple downgrades by various rating agencies resulting in a decline from investment grade to speculative grade credit ratings. The primary causes of the downgrades were stated to be the failed investments made by non-regulated subsidiaries, inadequate internal controls and failure to timely issue required financial reports to the Securities and Exchange Commission ("SEC"). Given the high level of integration of NUI and NUI-U, the rating agencies were compelled to lower the ratings of the regulated utility, NUI-U, to below investment grade, notwithstanding its adequate financial results. ETG was, and still is, a division of NUI-U.

At its March 20, 2003 agenda meeting, the Board directed the initiation of a focused audit of ETG, NUI-U, NUI and all of NUI's subsidiaries and selected Liberty Consulting Group ("Liberty") to perform the independent audit, BPU Docket No. GA03030213. The Board closely monitored the audit's progress and entered a series of Orders designed to address the

particulars of NUI's financial situation. Although throughout this process ETG was able to serve its customers, ultimately the Liberty Audit Report ("Liberty Report") identified significant concerns with numerous business practices of NUI that undermined the interests of ETG's ratepayers.

To address these issues, the Liberty Report set forth a series of findings and recommendations. In order to resolve all audit issues with the Staff of the Board of Public Utilities ("Board Staff") expeditiously and to avoid the costs of protracted litigation, on April 13, 2004, NUI, NUI-U, and ETG, (collectively referred to as "the Companies") and Board Staff executed a Stipulation and Agreement resolving all issues in dispute. Although the Companies did not acknowledge or admit the correctness of any specific finding in the Liberty Report, the Companies acknowledged that Board Staff found substantial merit in those findings. The Stipulation effectively implements the recommendations contained in the Liberty Report and recovers for ETG's ratepayers the monetary costs which Liberty calculated were improperly borne by ratepayers. By Order dated April 26, 2004 ("April 26, 2004 Order"), the Board accepted and adopted the Stipulation and Agreement.

As explained in the April 26, 2004 Order, a key element of the settlement was as follows:

The Company will return \$28 million to ratepayers and will pay a penalty of \$2 million. The credit to ratepayers starts with \$7 million by September 2004, \$6 million by September 2005, followed by \$5 million by September 2006, 2007 and 2008. The manner by which the credits are to be effectuated will be determined by the Board. A penalty payment of \$400,000 annually will be paid five successive Septembers starting in 2004.

(April 26, 2004 Order at 2).

In accordance with the April 26, 2004 Order, on May 20, 2004, ETG filed a refund proposal requesting to refund the initial \$7 million plus accrued interest as a bill credit to customers in the month of September 2004.

At the Board's June 9, 2004 agenda meeting, the Board authorized the Secretary to send a letter to interested parties, including all the parties to ETG's 2002 base rate case,<sup>1</sup> notifying them of ETG's refund proposal filing and giving them the opportunity to submit written comments. The letter also afforded ETG the opportunity to file reply comments.

The Board received written comments on June 15, 2004 from (1) Linden Cogen Technologies Linden Venture, L.P. ("Linden Cogen"); and (2) General Motors Corporation ("GM"). On June 16, 2004, the Board received comments from the Division of the Ratepayer Advocate ("RPA"). ETG filed a response to Linden Cogen on June 18, 2004 and to GM on June 21, 2004.

By Order dated, July 8, 2004, the Board issued an Order finding that ETG's proposed refund methodology fairly allocated the refund among the appropriate customer classes. Accordingly, the Board approved the refund methodology as submitted by ETG and ordered ETG to refund the initial \$7 million plus accrued interest, (for a total of \$7,866,005), as a bill credit to customers in the month of September 2004. ETG refunded the money as ordered. In addition, on September 28, 2004 ETG paid the initial \$400,000 installment of the \$2 million penalty plus

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<sup>1</sup> I/M/O NUI Utilities, Inc. d/b/a Elizabethtown Gas Company for Approval of Increased Base Tariff Rates and Charges for Gas Service and Other Tariff Revisions, BPU Docket No. GR02040245.

interest of \$68,392 for a total payment to the State of New Jersey of \$468,392 and an outstanding penalty balance of \$1.6 million.

On July 30, 2004, NUI Utilities, Inc., and AGLR (collectively, "Joint Petitioners") filed a verified Petition with the Board for approval, pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.14, of a change in ownership and acquisition of control of a New Jersey public utility and other relief, BPU Docket No. GM04070721 ("Merger Case"). Specifically, the Joint Petitioners sought all necessary Board approvals in connection with the acquisition by AGLR of all of the common stock of NUI, the corporate parent that owned all of the common stock of NUI-U. On November 1, 2004, a proposed Stipulation of Settlement ("Merger Stipulation") was submitted to the Board in the Merger Case signed by Petitioners, the Board Staff, the Ratepayer Advocate, and the New Jersey Large Energy Users Coalition ("NJLEUC") resolving all matters at issue between the signatory parties and recommending that the Board approve the merger subject to certain conditions listed therein. On or about November 5, 2004, Intervenor GM also signed the Merger Stipulation, making it a unanimous settlement.<sup>2</sup> By Order dated November 17, 2004, the Board approved the transfer by NUI on its books and records of all of the issued and outstanding shares of its common stock of NUI Utilities to AGLR, subject to certain conditions set forth therein. ("Merger Order"). The Board found that, under the unique circumstances presented by the case, the Merger Stipulation provided for a fair and reasonable sharing of the potential benefits of the merger between customers and shareholders. As part of the Merger Order, the Board approved the condition in the Merger Stipulation that required ETG to submit a plan to the Board to refund the outstanding \$21 million to ratepayers as soon as practicable after closing, but in no event more than sixty (60) days after closing, unless the Board orders otherwise. Further AGLR was to submit the remaining \$1.6 million of the penalty to the State of New Jersey pursuant to that plan.

On November 30, 2004, NUI Corporation was acquired by AGLR. On November 30, 2004, AGLR filed a proposal with the Board to credit the remaining \$21 million Focused Audit refund balance to ETG's customers beginning with the first billing cycle in January 2005. AGLR proposed that the balance be refunded using the same methodology that the Board had previously approved by Order dated July 8, 2004, and which was used for the initial Focused Audit refund to ETG's customers. Further, consistent with the method approved for the initial refund, AGLR proposed that any dollars not credited to customer accounts be credited to ETG's Basic Gas Supply Service ("BGSS") to provide additional customer benefit during the winter months. Copies of AGLR's proposal were served on all parties to the Merger Settlement. No objections to AGLR's proposal have been filed with the Board. Further, on December 9, 2004 the Division of the RPA filed a letter reaffirming its position that the proposed refund methodology is fair and reasonable to ETG's ratepayers and recommending that the Board adopt AGLR's proposal and authorize the refund of the outstanding \$21 million to ratepayers pursuant to the proposed methodology.

Specifically, AGLR proposes to refund the \$21 million, plus accrued interest of \$558,025, for a total refund of \$21,558,025 as a bill credit to customers beginning with the first billing cycle in January. ETG reviewed the assessment of harm to its customers calculated by Liberty Consulting Group. Of the items making up the harm, approximately 23% were attributable to issues related to base rates and 77% were attributed to issues that impacted gas costs. Therefore, consistent with the initial refund, AGLR proposes that the most equitable way to apportion the refund dollars would be to: 1) credit 23% of the refund dollars to all firm

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<sup>2</sup> The two gas utilities which had been granted "participant" status in the Merger Case, Public Service Electric & Gas Company and South Jersey Gas Company), submitted letters indicating that they did not oppose the Merger Settlement.

customers who were affected by the base rate increase on the basis of firm margin contribution, rather than on a purely volumetric basis, which they believe would unfairly and inappropriately skew the refund credits to the largest users and; 2) credit the remaining dollars to BGSS customers whose rates are affected by the cost of gas on a straight volumetric basis.

By letter dated December 13, 2004 AGLR filed a letter proposing to accelerate the payment of the Focused Audit penalty to the State of New Jersey by making a single payment of \$1.6 million (plus applicable interest) during the third quarter of 2005, but in no event later than September 30, 2005.

#### Discussion and Findings

The Board has reviewed AGLR's proposed refund methodology and, consistent with our July 8, 2004 Order, FINDS that it fairly allocates the refund among the appropriate customer classes. The separation of the refund dollars into two separate categories of, those that impacted base rates and those that impacted gas costs is both logical and appropriate given the findings and conclusions expressed in the Liberty Report. Apportionment of the base rate portion of the refund to all customer classes whose revenue requirements were the basis for the rates established in ETG's 2002 rate case, ensures that all ratepayers are compensated for the harm suffered since that time. To apportion the base rate share based purely on usage would unfairly favor the largest transportation and distribution users and, in so doing, minimize the harm suffered by ETG's significant number of residential customers. The method requested by ETG is just and reasonable because it essentially allocates the base rate portion of the refund to customer classes based upon their contribution to ETG's base rates. Similarly, apportionment of the gas cost portion of the refund to all sales customers that fully pay BGSS rates (as opposed to rates that are governed by separately negotiated special contracts with ETG) on a volumetric basis is also just and reasonable because gas commodity charges, unlike base rates, are based on usage. Therefore, it is fair that refunds relating to those charges be usage-based.

Accordingly, the Board HEREBY APPROVES the refund methodology as submitted by AGLR and HEREBY ORDERS AGLR to refund the remaining balance of the Focused Audit refund, \$21 million plus accrued interest (for a total of \$21,558,025), as a bill credit to ETG's customers in the month of January 2005 and to credit any remaining balance to the BGSS. For an average residential heating customer, this should result in a bill credit of approximately \$75.57, but will vary based upon the customer's actual usage from July 1, 2003 through June 30, 2004

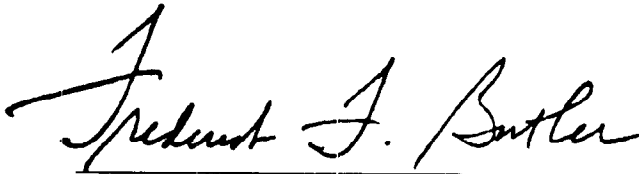
In addition, the Board believes that AGLR's proposal to accelerate the payment of the Focused Audit penalty to the State of New Jersey is in the public interest. Therefore, the Board HEREBY APPROVES AGLR's request and DIRECTS AGLR to pay the outstanding amount of the Focused Audit penalty, \$1.6 million plus applicable interest, to the State of New Jersey during the third quarter of 2005, but in no event later than September 30, 2005.

DATED: 12/23/04

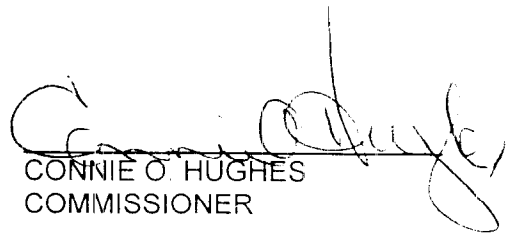
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BY:



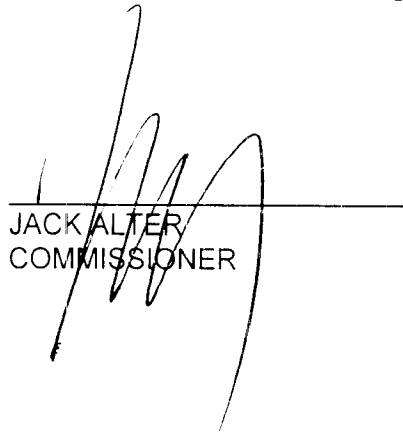
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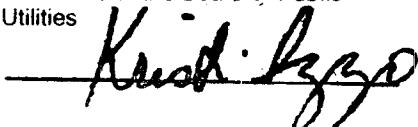


JACK ALTER  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



**In the Matter of the Petition of NUI Utilities, Inc. and AGL Resources, Inc.  
for Approval Under N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10  
of a Change in Ownership and Control  
BPU Docket No. GM04070721**

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